

In the Matter of:)
)
Proposed Regulations to Approve)
Certifiers and Technical) Docket No.
Assistance Providers for the) 03-QCTA-1
California Climate Action)
Registry)
_____)

SACRAMENTO, CALIFORNIA

9:34 A.M.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

STAFF PRESENT

Jeff Wilson, Project Manager

Lisa DeCarlo, Staff Counsel

Jennifer Williams

Pierre du Vair

ALSO PRESENT

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Miriam Lev-On, Executive Director
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P R O C E E D I N G S

9:34 a.m.

MR. WILSON: Welcome and good morning.

I'm Jeff Wilson with the Climate Change Program.

This workshop is to discuss the proposed regulations on the approval of technical assistance providers and certifiers for the participants in the California Climate Action Registry.

The workshop is part of a regulatory process that will formalize the qualifications and approval of service providers. The purpose of the workshop is to take questions and comments on the proposed regulations.

And since we have such a small audience here perhaps we could just go around and do some introductions. As I say, I'm Jeff Wilson with the Climate Change Program.

MS. WILLIAMS: Jennifer Williams.

MS. DeCARLO: Lisa DeCarlo; I'm Staff Counsel for the Energy Commission.

MS. CAMP: Robyn Camp with the California Climate Action Registry.

DR. LEV-ON: I'm Miriam Lev-On, a private consultant representing BP.

1 MR. WILSON: Okay. We'll just start off
2 with an introduction into the California Climate
3 Action Registry. So, Robyn, you have a
4 presentation here; we'll just start off with
5 yours.

6 MS. CAMP: So today, as current preface
7 to talking about the CEC's role I'd like to give
8 an overview of the Registry so you can understand
9 how the CEC's rulemaking affects and relates to
10 the California Climate Action Registry.

11 The California Climate Action Registry,
12 or the Registry, is a nonprofit organization that
13 was created by legislation. The Registry was set
14 up to help companies and organizations establish
15 greenhouse gas emissions inventories and baselines
16 against which any future greenhouse gas emission
17 reduction requirements may be applied.

18 Also the Registry is designed to
19 encourage voluntary actions to both increase
20 energy efficiency as well as decrease emissions of
21 greenhouse gases.

22 The Registry was created as a business
23 initiative and several pieces of legislation were
24 involved in its formation. Primarily Senate Bill
25 1771. The Registry began operations in September

1 of 2001 and launched its program officially in
2 October of 2002 with 22 charter members. As of
3 today, May 2004, we have 43 members.

4 The Registry's program consists of
5 several tools to help organizations that
6 participate in the Registry to report their
7 greenhouse gas emissions in a standardized
8 fashion. And these consist of a general reporting
9 protocol that is based on the greenhouse gas
10 protocol, an international document quickly
11 becoming the standard that has been and is
12 developed by the World Business Council for
13 Sustainable Development and the World Resources
14 Institute.

15 The general reporting protocol specifies
16 what should be reported; how the emissions should
17 be quantified; how an emissions report should be
18 completed and submitted to the Registry.
19 Additional guidance to help standardize reporting
20 of greenhouse gases is contained -- and is being
21 developed in the context of industry-specific
22 reporting protocols.

23 To date efforts are underway to have
24 protocols for the forestry sector, as well as the
25 electric power and utility sector. And we're also

1 working or thinking about developing guidance for
2 the oil and gas sector.

3 In addition, we have a certification
4 protocol that will -- that is written for
5 certifiers and is intended to provide guidance and
6 standardize the Registry's expectations for their
7 efforts and what they're to accomplish. Basically
8 to review the emissions reports and make sure that
9 they meet the requirements of the general
10 reporting protocol.

11 The last piece of the Registry's
12 reporting tool portfolio is CARROT, or the Climate
13 Action Registry Reporting Online Tool. And this
14 is a web-based software through which all
15 participants must report their emissions and
16 participants can also use it to help them
17 calculate their emissions if they so desire.

18 Participants are asked to report for the
19 first three years all of their CO2 emissions. And
20 starting with the fourth year of reporting they
21 should report all of their emissions for what are
22 called the six Kyoto gases. So including CO2,
23 methane, nitrous oxide, HFCs, PFCs and sulfur
24 hexafluoride. What should be reported is all of
25 their indirect and direct emissions from purchased

1 electricity, imported steam heating and cooling,
2 as well as from their mobile sources, any
3 stationary combustion activities, any emissions
4 from manufacturing processes and any fugitive
5 emissions.

6 The Registry from the beginning has --
7 the legislation that created the Registry also
8 defined roles for several state agencies to play
9 with the Registry. According to Senate Bill 1771
10 and 527 the California Energy Commission or the
11 Resources Agency is to provide technical guidance
12 to the Registry for reporting; determining
13 metrics; and approving technical assistance
14 providers.

15 The Resources Agency, and I should
16 clarify that the CEC, the California Energy
17 Commission, was assigned within the Resources
18 Agency to play this role, is tasked with approving
19 certifiers and also overseeing certification
20 activities. And lastly, to assist a third
21 legislatively required task is to assist with
22 public review of the Registry protocols.

23 In addition, other state agencies have
24 been given responsibilities. The Air Resources
25 Board, per Assembly Bill 1493, is to help the

1 Registry develop guidance for greenhouse gas
2 emissions from mobile sources. And the California
3 Department of Forestry and Fire Prevention, under
4 Senate Bill 812, is to help guidance for reporting
5 greenhouse gas emission reduction projects with an
6 emphasis on California forests and the
7 conservation management practices that go with
8 California forests specifically.

9 There are many voluntary greenhouse gas
10 reporting initiatives going on in the United
11 States today. What is unique about the California
12 Registry is the combination of a list of the next
13 several things which I'm going to mention. We're
14 the only voluntary Registry that requires all of
15 these aspects.

16 That it's an annual emissions inventory
17 of either all of the California emissions or all
18 of the national emissions. That we required both
19 direct and indirect emissions be reported. That
20 there are methodologies that are rigorous and
21 defensible. That we require third-party
22 certification. That we have an online reporting
23 tool. And also as a result of these elements
24 being included, the State of California has
25 promised to use its best efforts to make sure that

1 the data reported to the Registry receives
2 appropriate consideration in any future regulatory
3 scheme.

4 And then lastly, our participants, in
5 addition to reporting what is required, can also
6 complement their required reporting with
7 information that highlights some of the other
8 activities they're doing, including maybe
9 production goals or programs, other elements that
10 explain exactly what their emissions activities
11 are.

12 Many reasons for joining the Registry,
13 not the least of which are through reporting
14 participants identify what their emissions are;
15 and can identify some inefficiencies and begin to
16 manage those. By participating in a voluntary
17 program participants show environmental
18 leadership. They also can establish a baseline
19 which can be protected in the future. And also in
20 a wave of growing shareholder concern about
21 companies not managing their risk that may come
22 from global warming, reporting to the Registry is
23 a way of addressing shareholder concerns. Many
24 other reasons.

25 So, participants join the Registry;

1 commit to calculate and report their emissions.

2 Also agree to certify their emissions, have them
3 certified by a third party.

4 For the purposes of the Registry's
5 program, what is certification? Well, it's an
6 independent review of reported emissions. And we
7 think it's important because it insures that the
8 emissions that are reported adhere to the
9 requirements of the program and achieve at least a
10 minimum quality standard, at least 95 percent
11 accuracy.

12 Who can establish, who can perform this
13 service? Companies that are approved by both the
14 CEC and the Registry.

15 And what are certifiers, what are these
16 third-party organizations looking for, in addition
17 -- when they're reviewing for the standards? They
18 are looking for completeness and to insure that
19 all the sources are included, all the significant
20 sources are included. They're looking to make
21 sure that the emissions report is consistent.
22 That the measurement and the calculation
23 methodologies that are used can be compared --
24 that companies' performance can be compared from
25 year to year.

1 Comparability, that companies emissions,
2 total emissions reported can be compared from one
3 company to another. Accuracy, they're looking to
4 insure that the math works out; that there is
5 minimal error in either measurement or reporting.
6 And also transparency. They're looking to insure
7 that the calculations that were used can be
8 repeated by somebody besides the participant.

9 As I mentioned, it's a minimum quality
10 standard is at least 95 percent accuracy. And if
11 the emissions that are reported do not meet the
12 standard, then they're not certifiable.

13 We also ask certifiers to use their best
14 professional judgments in making -- in reviewing
15 reports and assessing if they comply with the
16 Registry's requirements and the state's
17 requirements.

18 So, just a brief overview of the
19 Registry's program and how certification factors,
20 and if there are any more questions, (inaudible).

21 MR. WILSON: Okay, thank you, Robyn.
22 All right, let's see here. I'll simply be going
23 through the regulations, the high points of the
24 regulations step by step. And if, Miriam, you
25 have any questions please just jump in and ask.

1 I'll just quickly mention Senate Bill
2 527 and an overview of the qualification process.
3 Robyn has already talked about this. Senate Bill
4 527 in section 42870 requires the Commission to
5 develop a process to qualify technical assistance
6 providers, TAs, and certifiers.

7 During certification the Commission is
8 to occasionally and randomly accompany the
9 certifiers to Registry participant sites.

10 Senate Bill 527 goes on to say that the
11 qualification process that the Commission is to
12 develop minimum capabilities required of the
13 service providers to publicize an application
14 process; to evaluate the applicants against the
15 minimum capabilities; and recommend qualified
16 firms to the Registry.

17 The Commission is also to periodically
18 update the list of service providers by reviewing
19 the current list of service providers; review new
20 applicants; and recommend to the Registry to add
21 or delete firms.

22 The qualification process. We will,
23 that is the Commission will issue a request for
24 applications, an RFA. And firms will submit an
25 application in response to the RFA. The

1 Commission will put together an evaluation
2 committee and the evaluation committee will either
3 approve or deny an application.

4 At that point the Commission will send
5 the list of names of firms that have been state
6 approved to the Registry. And the Registry will
7 provide training classes. After passing the
8 training class, the Registry training class, the
9 approved firms will be listed on the Registry's
10 website. And firms must renew approval after
11 three years.

12 So, I'm just going to start walking
13 through the actual text of the regulation,
14 starting with post-qualification -- the
15 application process and post-qualification
16 changes, that is article 4 and article 6.

17 Under article 4-2830 the applications
18 must be submitted in response to an RFA. And the
19 deadline for submitting an application is no less
20 than 30 days after the RFA is issued.

21 Section 2831, the evaluation committee
22 will consist of members from the Commission,
23 Registry and other state agencies. The applicant
24 must pass all of the pass/fail criteria and
25 achieve a cumulative score of 60 out of 90

1 possible points. And the committee may interview
2 applicants typically in situations where an
3 applicant is close to passing, but there is an
4 opportunity for an applicant to further clarify
5 their application. And the evaluation committee
6 may adjust the score based on those interviews.

7 Section 2832, applications may be
8 rejected if they are incomplete or received after
9 the deadline; if they contain false or misleading
10 statements; if the applicant does not use the
11 appropriate forms or is unsigned; if it contains
12 too much confidential information, or in the case
13 of technical assistance provider, if they contain
14 any confidential information. Or if the applicant
15 has a conflict of interest with the Commission or
16 the Registry.

17 And this would be a rejection of the
18 application before it goes to the evaluation
19 committee. This way it screens applicants that
20 are incomplete.

21 Section 2834, the Commission will
22 notify --

23 DR. LEV-ON: You skipped the 2833,
24 modifying an application. Is this just -- the
25 issue here is just notification, or does the

1 applicant have recourse if they are notified that
2 they are not acceptable because of the committee's
3 review? Is there any recourse process in place?

4 MR. WILSON: There is recourse after it
5 goes through the evaluation committee. However,
6 if an application is rejected, that is before it
7 even gets to the application committee because
8 it's incomplete or it's received after the
9 deadline, there's no dispute process.

10 DR. LEV-ON: Yeah, I'm not talking about
11 the received-after-the-deadline, but especially as
12 we go later on into the issue of conflict of
13 interest, if there is a dispute about --

14 MR. WILSON: Yes.

15 DR. LEV-ON: -- the conflict of
16 interest. So maybe we can leave it to later when
17 we get to discuss that.

18 MR. WILSON: Yes, yes. There is a
19 section that covers that.

20 DR. LEV-ON: Okay.

21 MR. WILSON: Okay. Section 2834,
22 Commission will notify applicants of results 30
23 days after the submission date or ten days after
24 receiving conflict of information -- pardon me,
25 conflict of interest information, whichever is

1 later.

2 A failing applicant may appeal to the
3 evaluation committee and the Commission's
4 Transportation Committee. All applications become
5 property of the state and becomes public record
6 except for confidential material.

7 And an applicant may request
8 confidentiality pursuant to the standard
9 confidentiality regs that the Commission has in
10 place.

11 In article 6, section 2850, the
12 certifier may add or delete staff at any time.
13 The certifier cannot fall below minimum staffing
14 levels. Section 2851, the approval expires after
15 three years. The Registry service provider must
16 reapply to maintain approval.

17 Section 2852, --

18 DR. LEV-ON: Excuse me, the renewal
19 approval applies only to the Registry service
20 provider, or it applies also to certifiers?

21 MR. WILSON: The term service provider
22 applies to both the technical assistance and
23 certifiers.

24 DR. LEV-ON: Okay.

25 MR. WILSON: So it's a general term that

1 covers both.

2 Section 2852, the Commission may rescind
3 approval if a service provider is no longer
4 qualified due to staffing or other criteria. If
5 the service provider has not complied with the
6 Registry certification policies -- so in this case
7 it would just apply to the certifier obviously --
8 or has not complied with the Commission conflict
9 of interest provisions.

10 The Commission may also rescind approval
11 of a certifier -- a service provider if that
12 service provider is guilty of gross negligence,
13 neglect of duty, misrepresentation or fraud,
14 felony or a misdemeanor involving certification on
15 moral turpitude.

16 Section 2853, the Commission shall
17 inform the certifier and Registry participant of
18 its intent to make site visits. Prior to a site
19 visit a participant shall provide any information
20 provided to the certifier. During the site visit
21 participants shall provide documentation
22 sufficient to ascertain one, whether the
23 participant has a program consistent with the
24 Registry protocols; and two, the reasonableness of
25 the data reported to the Registry.

1 Yes?

2 DR. LEV-ON: Can I ask a question here,
3 because what you said here is very short, but the
4 detail in the text of 2853 goes into great length
5 into specifics of what the Commission might
6 require during a visit.

7 So my first question is on 2853(B) where
8 it says the Commission or the Commission's
9 contractor. What are the qualifications of the
10 Commission's contractor? How does one determine
11 that the Commission's contractor is, indeed,
12 qualified to undertake the task that they are
13 doing on behalf of the Commission? Are they
14 subject to the same requirement as a service
15 provider?

16 MR. WILSON: No. The Commission
17 contractor is not subject to the same provisions
18 or the same qualification process as a certifier.
19 And the Commission's contractor may fill in any
20 particular role that the Commission deems
21 necessary to assist the Commission in fulfilling
22 its duty under 527, SB-527.

23 DR. LEV-ON: Okay. The other item, in
24 (B)(2), I'm sorry, --

25 MR. WILSON: Um-hum.

1 DR. LEV-ON: -- there is specific
2 listing of a greenhouse gas management plan.

3 MR. WILSON: Um-hum.

4 DR. LEV-ON: Is the existence of a
5 greenhouse gas management plan a requirement
6 for --

7 MR. WILSON: It is not necessarily a
8 requirement, but it would be documentation that
9 would help the Commission determine if a
10 participant has a program consistent with Registry
11 protocols.

12 DR. LEV-ON: I understand this, but it
13 seems that by specifically listing all these
14 things here in the body of the rule as specific
15 requirements, it adds on new requirements that are
16 not in the original, either in the general
17 protocol that the Registry has, which was
18 certifying, or to the intent, or to the language
19 in the statute --

20 MR. WILSON: Um-hum.

21 DR. LEV-ON: -- that authorized CEC to
22 do that. It's more of a guidance to the CEC
23 onsite evaluator of the type of documentation that
24 they would want to look at, the same as it could
25 be guidance to certifiers.

1 MR. WILSON: Um-hum.

2 DR. LEV-ON: So, I'm wondering whether
3 it belongs in the rule, itself, because it adds a
4 specific -- I'm not an attorney, I'm looking --

5 MR. WILSON: Right, right.

6 DR. LEV-ON: -- at it as a technical
7 person. And you have your counsel there, so maybe
8 she can address that.

9 MR. WILSON: Yes. Well, yes. Before we
10 go to Lisa perhaps what we need to do is look more
11 closely at the language and the listing of these
12 items here are perhaps examples of what the
13 Commission would look for to, as I say, make a
14 determination of whether the participant has a
15 program. And also the reasonableness of the data.

16 DR. LEV-ON: Yeah, because by saying --
17 by prefacing the list with the sentences including
18 but not limited to the following is an indication
19 that all of this definitely would be required, --

20 MR. WILSON: Um-hum.

21 DR. LEV-ON: -- and would be included in
22 the requirement for records. And some other
23 things might also be required. So if there is any
24 way of either removing it from the section,
25 itself; putting it in some sort of an addendum,

1 appendix. I don't know the legalese on how you do
2 it, but --

3 MR. WILSON: Yes.

4 MS. DeCARLO: All right, we'll --

5 DR. LEV-ON: -- not imply that --

6 MS. DeCARLO: -- look at the language.

7 There should be a simple way to rephrase it.

8 Either leaving it in place but having language in
9 front of it saying --

10 DR. LEV-ON: As an example.

11 MS. DeCARLO: -- that if this stuff is
12 available, if the company does have this
13 information then it should be provided. Or the
14 Commission may request it. Or it may be that we
15 need to remove the certain nonrequired information
16 and put that in another place.

17 DR. LEV-ON: Because some of this is
18 good guidance because the type of things that
19 you've listed is what you want to look at --

20 MS. DeCARLO: Right.

21 DR. LEV-ON: -- in order to collect
22 enough information to be able to evaluate an
23 inventory. But I'm just -- I don't want for us to
24 get into a position where you're creating new
25 obligations --

1 MS. DeCARLO: Right, no, and I
2 understand completely that concern.

3 MR. WILSON: Yes. Very good point,
4 thank you.

5 The last bullet here on the slide. If
6 the Commission determines that a participant does
7 not meet the requirements then the Commission
8 shall recommend to the Registry that the Registry
9 not certify the participant's data.

10 DR. LEV-ON: And that's, if I may, Jeff,
11 this is exactly what bothered me reading this
12 list. Because all of this list is not required;
13 and if you do not happen to have one of the items
14 of the list, but otherwise you have a perfectly
15 good emission inventory, then I can see it would
16 say that if you do not have a waste-in-place data,
17 item 10 here, or a waste landfilled information,
18 then your greenhouse gas emission inventory might
19 be deemed invalid. And that's where the problem
20 lies of the consequences of all this 13 items that
21 are listed, and what's implied in item (C).

22 MR. WILSON: Yes, thank you. That's a
23 good catch.

24 All right. Moving along, qualifying as
25 a technical assistance provider. And I'll let --

1 okay, I'll let Jennifer take over on this one.

2 MS. WILLIAMS: Okay. According to
3 article 2, 2810, the technical assistance
4 application should contain a list or matrix of
5 qualified staff who will be performing the
6 services. And the qualifications should be
7 demonstrated through education or professional
8 licenses, titles of previous work products or any
9 other relevant information, such as training or
10 certifications.

11 They should also contain a list of any
12 judicial proceedings that have been filed against
13 the firm within the previous five years. And also
14 two samples of work products performed for a
15 client that represent the applicant's mastery of
16 one or more of the key topics. Or auditing
17 environmental responsibility or developing
18 greenhouse gas related software.

19 And finally, the applications should not
20 contain any confidential information.

21 DR. LEV-ON: Could you clarify something
22 for me. There's two topics, the auditing
23 environmental responsibility or developing
24 greenhouse gas related software, is this a
25 requirement for proficiency by the technical

1 service provider?

2 Or is it something in addition? Because
3 you say one or more -- item 3, I'm sorry, under
4 item (A)(3) it says one or more of the key topics
5 or the following. But, you know, these two are
6 highlighted in such a way that it seems that
7 that's the only two that you'd be focusing on, on
8 whether an entity is qualified to be a technical
9 service provider.

10 MS. WILLIAMS: In front of that, though,
11 we mention the key topics. And this was just an
12 attempt to not repeat under every single section
13 the same litany of ten or so -- I don't know how
14 many -- six various topic areas that we would be
15 looking at.

16 So in the definition section we had
17 defined key topics, under section 2801, to include
18 four other topic areas that the technical
19 assistant could provide their work samples showing
20 expertise of.

21 DR. LEV-ON: But the key topics, the way
22 they are described in item (K) in the definitions
23 says, means topics relevant to the certification
24 of greenhouse gas; doesn't mean key topics for,
25 you know, because this specifically applies to

1 technical assistants providers --

2 MS. WILLIAMS: Right, --

3 DR. LEV-ON: -- not necessarily to
4 certifiers.

5 MS. WILLIAMS: No, but relevant to
6 certification means that any key topics that will
7 be used in the process of certify. I mean
8 technical assistants will be there to help assist.

9 DR. LEV-ON: Technical assistance
10 provider, to my understanding, does not assist the
11 certifiers. The technical assistance providers
12 assist the entity to develop an emission inventory
13 and the set of qualifications of key topics that
14 they need to be familiar with.

15 Is what you have listed here, utilizing
16 engineering principles, estimating -- but those
17 are not just relevant to the certification. Those
18 are relevant to the actual development of the
19 report, the greenhouse gas report.

20 MR. WILSON: Yes, Miriam. Again, good
21 catch. We should take a look at the definition of
22 key topics and if the language that suggests that
23 key topics applies only to certification we need
24 to look at that again and make it more general.

25 DR. LEV-ON: Just as long as it's broad

1 enough and says that relevant to technical
2 service, the provision of technical services,
3 which you said earlier on includes both the
4 technical assistance and the certification.

5 MR. WILSON: Service providers, yes.

6 DR. LEV-ON: Yeah, service providers.

7 MR. WILSON: Um-hum.

8 MS. WILLIAMS: Okay. Article 2, section
9 2811, the minimum requirements for technical
10 assistance providers is the applicant should have
11 at least two years of greenhouse gas or other air
12 emissions-related experience in utilizing
13 engineering principles, estimating greenhouse gas
14 emissions, developing and evaluating air emission
15 inventories, auditing and accounting principles,
16 auditing environmental responsibility or
17 developing greenhouse gas related software.

18 DR. LEV-ON: Is this new language?
19 Because it wasn't in the language of the draft
20 that I was analyzing that was on the web.

21 MS. DeCARLO: Those are the key topics.

22 DR. LEV-ON: Yeah, those are, but they
23 are not listed in 2811.

24 MS. WILLIAMS: Yeah, it's listed
25 differently in the regulations.

1 DR. LEV-ON: Oh, so there's new
2 language; so 2811 has changed?

3 MS. DeCARLO: No, we do reference the
4 key topics.

5 DR. LEV-ON: Yeah. Oh, okay, so she is
6 reading off the key topics --

7 MS. DeCARLO: Right.

8 MS. WILLIAMS: Right, we're just --
9 right, that's part of the key topics, yes.

10 DR. LEV-ON: Okay.

11 MS. WILLIAMS: Okay.

12 MR. WILSON: All right, that covers the
13 qualification process for technical assistants. I
14 just wanted to go back just a little bit, because,
15 Miriam, you asked about if there was an
16 opportunity for an applicant to dispute an
17 evaluation by the evaluation committee. Did we
18 cover that?

19 DR. LEV-ON: No. We said that we'll
20 cover it when you get to that -- you said that you
21 would cover it when you get to the section in the
22 presentation.

23 MR. WILSON: Yes. Actually, we zoomed
24 right by it, and let me see if we can find it.

25 (Parties speaking simultaneously.)

1 DR. LEV-ON: There is something on the
2 appeal of the termination, that they certainly
3 provide some process.

4 MR. WILSON: Yes, under 2834.

5 DR. LEV-ON: And 2835, yeah.

6 MR. WILSON: Um-hum. Under 2834 the
7 language reads that the Commission shall notify
8 applicants of the results of the evaluation of
9 their applications by mail no later than 30
10 working days after the deadline for submission.
11 Or in the case of applications for certifiers, ten
12 working days after all of the conflict of interest
13 information is received, whichever is later. So
14 that's the notification of results of the
15 evaluation.

16 And then in 2835 it goes on, the appeal
17 of determination. If an application receives a
18 failing score in the evaluation process, an
19 applicant may dispute the evaluation by first
20 filing an appeal with the evaluation committee
21 within 30 days of receiving the results of the
22 evaluation. The appeal shall consist of written
23 statements explaining how the application meets
24 the criteria and minimum score required. The
25 evaluation committee shall grant or deny the

1 appeal within ten working days.

2 If the applicant is not satisfied with
3 the evaluation committee's response, the applicant
4 may file a subsequent appeal with the Commission's
5 Transportation Committee within five days of the
6 evaluation committee's determination.

7 The Transportation Committee shall
8 consult with the Registry president and issue a
9 decision on the appeal within 30 working days of
10 receipt of the appeal.

11 DR. LEV-ON: Yeah, so that lays out the
12 process.

13 MR. WILSON: Right.

14 DR. LEV-ON: That's what I was looking
15 for, to see if there is a process that you can go
16 through --

17 MR. WILSON: Yes.

18 DR. LEV-ON: -- that is recognized.
19 Good.

20 MR. WILSON: Okay.

21 DR. LEV-ON: This is all the applicant -
22 - the individual certifier or service provider has
23 to go through this. It has nothing to do with as
24 a Registry member that wants to use the services
25 of the --

1 MR. WILSON: Correct.

2 DR. LEV-ON: -- of that applicant.

3 MR. WILSON: Yes, yes. This would be
4 the process the service provider would go through
5 if they wanted to appeal. And it would be before
6 the service provider would be listed as state and
7 Registry approved.

8 So it doesn't really impact the Registry
9 participants.

10 DR. LEV-ON: Right. Okay.

11 MR. WILSON: Okay. Qualifying as a
12 certifier, article 3, section 2820. Any firm that
13 certifies the Registry participants GHG inventory
14 must be state approved. The applications shall
15 contain financial statements from the previous
16 year. If the financial statement is in the name
17 of a related entity they must -- the applicant
18 must document the relationship. The application
19 shall contain a copy of an insurance policy for a
20 minimum of \$1 million for professional liability
21 insurance.

22 The application shall also list the
23 designated staff and provide r,sum,s and staff
24 qualifications. A list of judicial proceedings
25 within the last five years. A minimum of three

1 work products produced within the last five years.
2 And these work products may be confidential for
3 the certifier -- in the case of the certifier.

4 Work products must demonstrate the
5 applicant's ability to organize and manage a team.
6 The work products must be from multiple industry
7 sectors for the general certifier; and from the
8 relevant industry sector for industry-specific
9 certifier.

10 The application should provide at least
11 one reference for each work product from a project
12 manager or equivalent. The application shall
13 contain a description of their anticipated
14 approach to certification including how the
15 applicant would scope and plan a certification.
16 How they would coordinate with the Commission and
17 the Registry. And how they anticipate conducting
18 certification services.

19 The application will include a
20 description of how staff knowledge is updated.
21 And also a demonstration that the applicant has
22 policies and mechanisms in place to prevent
23 conflict of interest.

24 The prevention -- under section 2820,
25 the prevention of conflict of interest includes

1 identification of the type of services offered by
2 the applicant; the customers served; and the
3 locations where services are provided.

4 The applicant will also include an
5 organization chart that includes the applicant and
6 related entities and the services offered by each.
7 And a specific identification of entities that
8 provide incompatible services, the management
9 structure and how profits are distributed.

10 Prevention of conflict of interest also
11 includes measures that protect the applicant's
12 impartiality including committees or structures
13 set up specifically for that purpose; steps taken
14 to minimize risk to impartiality; policies or
15 arrangements that demonstrate independence;
16 procedures or records that demonstrate staff are
17 not involved in activities that might influence
18 them; and any additional arrangements or measures
19 that address or resolve conflict of interest.

20 Under section 2820, the applications
21 shall contain a signed declaration attesting to
22 the applicant's ability to perform a case-by-case
23 evaluation of conflict of interest; and the
24 applicant's intent to comply with the Commission's
25 conflict of interest process and requirements.

1 The Commission may request additional
2 information from an applicant or seek additional
3 information from other persons regarding the
4 applicant's fitness for qualification during the
5 review period.

6 Under section 2821 the minimum
7 requirements for general certifiers include the
8 company has to exist, that is the applicant has to
9 have been in existence for at least four years.
10 The applicant and related entities must have a
11 combined revenue of at least \$4 million for the
12 prior year.

13 The applicant and team members must have
14 a minimum of 15 designated staff; seven employed
15 by the applicant and not partners; no more than
16 five staff may be individual subcontractors to the
17 applicant.

18 And pardon me, I believe I misspoke in
19 that prior bullet when I said related entities,
20 and it should actually have been that the
21 applicant and partners, the minimum combined
22 revenue of \$4 million should be for the team, the
23 applicant team, which would include partners.

24 Section 2821, minimum requirements for
25 general certifiers include that each designated

1 staff shall have greenhouse gas emissions or air
2 emissions related experience and at least one of
3 the following:

4 So, each staff must be able to utilize
5 engineering principles; have experience in
6 estimating GHG emissions or developing an
7 evaluating air emissions inventories; or auditing
8 and accounting principles; or knowledge of
9 information management systems. And this is for
10 each designated staff.

11 Now, the minimum requirements for
12 general certifiers, that is for each applicant,
13 shall have greenhouse gas or other air emissions
14 related knowledge in all of the following: And
15 it's basically the same list utilizing engineering
16 principles, estimating GHG emissions, developing
17 and evaluating air emissions inventories, auditing
18 and accounting principles, knowledge of
19 information management systems, as well as the
20 purpose of the Registry and Registry protocols.
21 So the applicant must have knowledge in all of
22 these areas.

23 MR. QUINN: May I --

24 MR. WILSON: Okay, you have a question.

25 Could you just use the microphone there so we

1 could get it on record.

2 MR. QUINN: My name is J. Patrick Quinn.

3 And I've been attending meetings here since the
4 Energy Commission was formed, for almost 25 years.

5 I've waited the better part of these 20-
6 some years for this particular situation to come
7 forth. My background is instrumentation.

8 And I also have a comment because I'm
9 attending an IEEE school over at the Convention.
10 I walked here for the purpose of only making this
11 comment.

12 MR. WILSON: Um-hum.

13 MR. QUINN: Having read these
14 requirements I can only come to one conclusion,
15 after waiting for 20, 25 years. Is that this is
16 constrained to those that can afford certain
17 equipment of instrumentation, of which I happen to
18 be an instrumentation specialist, of which it
19 would cost me \$25- to \$35-thousand at this moment
20 in time.

21 And the only companies or groups that
22 are qualified to do this are what we call energy
23 communications companies or energy service
24 companies which are companies that have been
25 organized over the last two and a half to four

1 years by the various utility companies that have
2 been broken up and deregulated.

3 I don't see how a person such as my size
4 could ever qualify for these prerequisites. It's
5 impossible. Because I've starved to death for 30
6 years and I certainly can't afford to compete
7 against this situation.

8 So, I'd only like to make that comment.
9 I consider it very restrictive and not
10 competitive.

11 MR. WILSON: Yes.

12 MR. QUINN: Thank you.

13 MR. WILSON: Thank you for your comment.

14 And we do have provisions for partnering. So,
15 individuals such as yourself, as well as
16 companies, smaller companies, may partner with
17 other companies to meet the minimum
18 qualifications.

19 MR. QUINN: Well, I -- I would have to
20 bring in a much larger organization or become a
21 part of that particular situation so that my
22 alleged expertise could ever surface to the top.
23 And therefore I've allegedly been put out of
24 business, for all practical purposes, as an
25 instrumentation specialist. Okay.

1 So, and then with the specifications
2 that are being written by certain members of the
3 Energy Commission over the last three or four
4 years, it's for the very purpose of why I've been
5 here for the past 25 years, is to make sure that
6 the cost of doing business in the State of
7 California, on a micro-climatic basis, does
8 require -- I'm not denying these prerequisites
9 whatsoever, I'm the one that insisted and
10 challenged in 1980 the very fact that these
11 standards did not exist because of the lack of
12 instrumentation.

13 And here it is almost 25 years later and
14 we're just getting to the part of eliminating a
15 capability and a capacity that had a very
16 definitive requirement 25 years ago. Which, of
17 course, you're now admitting.

18 Thank you very much.

19 MR. WILSON: Thank you for your comment.

20 MR. QUINN: I will mail this out, and I
21 will answer this eventually. And I'm sorry.

22 (Laughter.)

23 MR. WILSON: Okay.

24 MR. QUINN: I can't be three places at
25 once, and this makes the fourth dimension, and I'm

1 only a fifth dimension man, so.

2 (Laughter.)

3 MR. WILSON: Okay. Thank you. Yes.

4 Well, we do hope that individuals and smaller
5 companies do participate in this process. And, as
6 I say, that's why we allowed partnering. And
7 we'll get to that part soon.

8 MR. QUINN: If I may make one other
9 statement.

10 MR. WILSON: Mr. Quinn.

11 MR. QUINN: Two years ago in Rancho
12 Mirage I attended the Energy 2002 Conference
13 sponsored by the General Services Administration,
14 the Federal Government. And I was thoroughly
15 briefed for three days, June 1st, 2nd and 3rd of
16 2002, as to the prerequisites of 2004 and beyond,
17 starting in March, April and May of this year,
18 which is right on schedule.

19 And I asked some of the people attending
20 there when was I going to have available certain
21 capabilities embedded into systems on a chip, or
22 what I called back in 1983, policy on a chip. So
23 that the degree of difficulty for 15 people would
24 not exist because I could embed it into a certain
25 set of chips.

1 Everybody sitting on the staff could not
2 answer my questions. And I have been designing
3 prototype chips since 1963. So what happens to
4 our experience and our talent? You can't answer
5 that question. But I bring wisdom to this table.

6 MR. WILSON: Um-hum.

7 MR. QUINN: And I'm still going back to
8 this meeting if I can get there, and this damn
9 thing will stop ringing.

10 (Laughter.)

11 MR. QUINN: Because I'm just a
12 practitioner that learned to do these things as a
13 matter of survival. Now I will shut up. Thank
14 you.

15 MR. WILSON: Okay, thank you.

16 DR. LEV-ON: I just wanted to clarify
17 that in all of this discussion that we were having
18 right now, which was fascinating, but for
19 certification purposes there's no need for any
20 specific instrumentation, or for any measurement,
21 per se. It's more to certify, to review the
22 engineering estimates and the assessments that are
23 already done by the company that is providing the
24 report.

25 I just wanted this clear for the record.

1 MR. WILSON: Yes, thank you.

2 DR. LEV-ON: That there's no presumption
3 that we need any special instrumentation, you
4 know, to be able to do the certification.

5 MR. WILSON: Yes, there is no
6 presumption of that requirement, um-hum. Okay.

7 Section 2821, minimum requirements for
8 general certifiers include at least two years
9 experience in certification or verification of
10 greenhouse gas emissions or other air emissions
11 activities. Staff experience shall only be
12 considered as applicant experience if the staff
13 person was employed by the applicant when
14 performing the relevant work.

15 Section 2822, minimum requirements for
16 industry-specific certifiers shall include all of
17 the requirements for the general certifier except
18 applicants will have a minimum combined revenue of
19 at least \$1 million and not \$4 million. So that
20 would be applicants and partners.

21 And for the industry-specific certifiers
22 the applicant shall have a minimum of seven
23 designated staff, five employed by the applicant
24 and not partners, and no more than two staff may
25 be individual subcontractors to the applicant.

1 Applicant shall employ staff with
2 professional licenses, knowledge and experience in
3 the industry it seeks to certify.

4 Section 2823, partners are additional
5 firms that may be used to meet the minimum
6 requirements for general or industry-specific
7 certifiers except for the requirements of years in
8 existence and staff to be employed solely by the
9 applicant.

10 The following firms shall automatically
11 be deemed partners: Firms employing designated
12 staff or related entities that are used to
13 demonstrate experience; or related entities that
14 are relied upon to demonstrate financial
15 capability.

16 Partners shall separately submit the
17 information required of the applicant except for
18 proof of insurance, three work samples, a
19 description of anticipated approach and the cover
20 page.

21 Partners shall submit at least one
22 sample of work product. And the work product will
23 be considered when evaluating the sum of
24 experience provided by the applicant team. Okay.

25 DR. LEV-ON: Can I ask a couple of

1 questions?

2 MR. WILSON: Yes.

3 DR. LEV-ON: First of all, there are
4 currently -- there were some rounds of requests of
5 applications and you have certain certifiers that
6 are listed there on the Registry.

7 What happens now? Are -- they would
8 have to resubmit following these new rules? Or
9 are they still going to be valid for the next
10 three years because their term of office -- or
11 terms of whatever their credentials were, for
12 three years?

13 MR. WILSON: We will likely ask that
14 service providers that are currently listed
15 provide a letter indicating that the information
16 that they provided under previous RFAs is still
17 current. If not current, they need to update the
18 information and then the Commission will likely
19 evaluate -- I'm going to have to defer to the
20 attorney here, but I'll just give you the process
21 as I envision it at this time.

22 But, the Commission would look at the
23 information that's provided previously and
24 determine if that meets the current requirements.
25 Since the regulations are patterned after the

1 previous request for applications, it is likely
2 that the service providers that are currently
3 listed with the Registry will meet the
4 requirements, and therefore they will have a
5 minimum amount of effort and information that they
6 will need to provide to meet the regulations.

7 DR. LEV-ON: So basically there is no
8 material new requirements here from the service
9 providers in terms of the level of insurance or
10 the years in business, the extent of their
11 revenue, you know, all these things are basically
12 the same as you had before so you don't see any
13 obstacle?

14 MR. WILSON: Correct.

15 DR. LEV-ON: Provided that the
16 information is current and maintaining the roster
17 of existing certifiers.

18 MR. WILSON: Yes. Yes, correct. In the
19 previous rounds the criteria was not listed in
20 black and white. We did not have the clarity that
21 we have in the regulations, but basically it is
22 the same requirements.

23 DR. LEV-ON: Okay.

24 MR. WILSON: Do you have anything to
25 say?

1 MS. DeCARLO: No, I think you summed it
2 up fairly well. They won't automatically be
3 grandfathered in, but there's no substantial
4 deviation from the RFAs. We did base the
5 regulations on the language contained in the RFAs.

6 DR. LEV-ON: Because there's some
7 interesting combinations here when you're talking
8 about certifiers that either have other entities
9 or are part of another entity, because there are
10 fairly large engineering consulting firms that are
11 setting up their own verification services, trying
12 to be at arm's length from the engineering
13 consulting, but sometimes drawing out of their
14 engineering expertise in the engineering
15 consulting in order to augment their teams for
16 various audits and certifications.

17 So I think that that's what you're
18 trying to --

19 MR. WILSON: Yes, exactly. And that's
20 what we ran into, the applicants for to act as
21 certifiers, their company structure was often
22 complex, and they would draw upon other
23 subsidiaries under their parent company. And
24 these requirements evolved from that discovery of
25 how applicants were actually trying to build their

1 teams.

2 DR. LEV-ON: Because it's also a new
3 practice, or a new expertise. There's been some
4 expertise around in management systems audits, you
5 know, like (inaudible) 14001. And there's been a
6 lot of accounting firms that have had experiences
7 in just auditing or attesting to the validity of
8 environmental reports.

9 But actually going through and
10 certifying greenhouse gas emissions inventories, I
11 think it's a whole new creation, right? There's
12 not a lot of history, and then there are few that
13 I can think of that have done this for maybe three
14 or four years or thereabouts, maybe five years.

15 MR. WILSON: Yes, absolutely. I agree
16 with that. And I believe we are setting a
17 precedent here.

18 DR. LEV-ON: Um-hum. I'll ask you a
19 question that is totally out of this, of the State
20 of California issue. Have you been communicating
21 with the Department of Energy on this issues,
22 because they are trying to set up now a system for
23 certification and verification within the 1605(b)
24 process.

25 MR. WILSON: We have not commented on

1 that specific aspect, although the Commission has
2 been in communication with DOE just on the 1605(b)
3 program in general.

4 DR. LEV-ON: The Department of Energy
5 just surfaced new language that they would want us
6 to start thinking about when they put in the
7 amended procedures in place in June to have an
8 expanded language around verification and
9 certification. So, I was wondering whether there
10 was any communication between Washington and
11 California, but apparently not.

12 MR. WILSON: Um-hum, no formal
13 communication on that particular aspect.

14 DR. LEV-ON: Okay, thank you.

15 MR. WILSON: Conflict of interest,
16 article 5. The conflict of interest provisions
17 apply only to the certifiers, not to the technical
18 assistants.

19 Section 2841, prior to the commencement
20 of certification the certifier is to submit a
21 self-evaluation of the potential for conflict of
22 interest including an identification of the
23 potential for conflict as high, low or medium.
24 This self-evaluation will include an organization
25 chart of the Registry participant and related

1 entities; identification of whether the certifier
2 has previously provided certification services to
3 the Registry participant.

4 The self-evaluation will also include an
5 identification of whether the certifier or related
6 entity has engaged in any noncertification work
7 for the Registry participant, or related entities
8 during the previous three years. If they have,
9 then they will need to explain the nature of the
10 work performed; the nature of the relationships
11 with the Registry participant; how much work was
12 performed in the last three years in dollars or
13 percent of certifier's revenue.

14 The self-evaluation will also include,
15 if there has been previous work, previous
16 noncertification work, then it will also include a
17 listing of any contracts with the Registry
18 participant; what related entities will be
19 involved in any contracts; how much GHG related
20 work has been performed. Also an indication if
21 the certifier's credibility can be questioned on
22 this conflict of interest; the monetary value of
23 proposed certification services; the location of
24 any work performed; and whether the work is
25 sensitive or highly visible.

1 This --

2 DR. LEV-ON: Can I --

3 MR. WILSON: Yes.

4 DR. LEV-ON: Do you want to go all
5 through this, or do you want me to ask you
6 questions in the middle?

7 MR. WILSON: Jump in.

8 DR. LEV-ON: I see here some elements
9 that are taken from the Sarbanes-Oxley Act.

10 MR. WILSON: Yes.

11 DR. LEV-ON: In terms of certifiers.
12 And the question is does Sarbanes-Oxley really
13 apply here to this kind of certification, or to
14 this kind of audits. This is not --

15 MR. WILSON: It does not --

16 DR. LEV-ON: -- financially it's not
17 disclosure at the SEC maybe when the SEC starts
18 requiring disclosure of greenhouse gas emission as
19 a risk factor or something, then that would be
20 different.

21 But kind of the general philosophy of
22 this.

23 MR. WILSON: Yes. Sarbanes-Oxley does
24 not apply to this program. It's a voluntary
25 program. However, the impetus for Sarbanes-Oxley

1 is the same in that in order to create a credible
2 process we want to insure that the certifiers have
3 no conflict of interest. And so there are
4 provisions in that Act that are relevant to our
5 process.

6 And as you pointed out, this is a new
7 process, and so we will have to move forward
8 without necessarily having a model in place. But
9 the Commission believes that this is a worthwhile
10 step in establishing that we do have credibility,
11 that the certifier does have credibility.

12 DR. LEV-ON: You know, it's a good goal
13 and it's laudable, you know, to try to create a
14 credible process. But it is a voluntary process
15 and you want to encourage people to participate.
16 You don't want to discourage them just at the
17 threshold of just saying, I don't need that.

18 MR. WILSON: Um-hum.

19 DR. LEV-ON: And there are several
20 elements here that are far-reaching, especially
21 for multinational corporations that have multiple
22 activities, not just in California and the U.S.,
23 but in many parts of the world.

24 And they're dealing with maybe large or
25 medium engineering firms, service providers in

1 each one of their activities. And there seems to
2 me almost impossible to attest any of the
3 subsidiaries or affiliate or partners of one of
4 the certification team might not have had, you
5 know, in the past, present or future, a business
6 relationship with one of the subsidiaries of a
7 multinational corporation that is all over the
8 world.

9 And whether if a company is providing
10 services in West Africa to an oil and gas
11 production platform; and the subsidiary of that
12 company is certifying the Registry protocol or the
13 Registry submissions, you know, there might or
14 might not be a conflict of interest in doing that.

15 So the question is how do you make it a
16 little bit easier to ascertain that it's do-able.
17 Because some of the words here would imply that
18 you would never have any certainty that there's no
19 potential for somewhere around the world somebody
20 doing work for you that might somehow be
21 affiliated with a certifier or a registrar or
22 whatever you call them.

23 MR. WILSON: Yes. You've identified the
24 difficulty in determining conflict of interest.
25 And you've also pointed out that it is very gray.

1 We have divided this up into low, medium and high
2 potential for the self-evaluation.

3 We can fairly clearly identify what is
4 considered a high potential of conflict of
5 interest; and we have clearly identified what is
6 considered a low potential of conflict of
7 interest. However, that still leaves a great deal
8 in that mid-range which is medium potential of
9 conflict of interest. And that's why we've
10 included case-by-case evaluations that the
11 Commission will undertake.

12 Now, as far as the logistics of a
13 certifier determining their relationships, with a
14 participant or related entity, that is why the
15 Commission will look for the actual ability to do
16 that sort of determination. Does the certifier
17 have a database where they collect this sort of
18 information. Can they do a search on the
19 participant's name and subsidiary's name. And
20 this is why it requires an org chart of
21 subsidiaries.

22 It's understood that it can be very very
23 complex. What the Commission will require of the
24 certifier is that they make their best effort. We
25 cannot require certainty in this, but that the

1 certifier, to the best of their knowledge, they've
2 undertaken a search to determine if there is any
3 prior relationships or any ongoing relationships
4 with the participant. And that's what they would
5 have to attest to.

6 DR. LEV-ON: Yeah. The section that is
7 the most troubling as far as the ability -- and,
8 again, it's not up to the Registry participant,
9 like BP, it's up to their certifier.

10 But if you look at 2841(4), that is very
11 wide-reaching because it says, you know, to
12 identify whether the certifier or related entity
13 has engaged in any non-certification services of
14 any nature with the Registry participant either
15 within or outside California, which means the
16 world, during the previous three years.

17 And then the (A) and (B) under that,
18 especially (B), the nature of past, present or
19 future relationships with the Registry
20 participant, including whether certifier performed
21 or will perform work for the registered
22 participant, so you have to anticipate the future
23 or so, and then whether work is currently being
24 performed by the Registry participant, and then
25 (3) how much work was performed for the Registry

1 participant in the last three years in dollars or
2 percentage of certifier's revenues or gross.

3 Those might be very very high barrier
4 for a certifier to be able to attest to, or any
5 certifiers, speaking as BP, any certifiers that BP
6 has used in the past. Because BP really pioneered
7 a lot of the effort of getting third-party, a team
8 of third-party experts to certify its emission
9 inventory worldwide.

10 So, of course they've had relationships
11 with many of the well known certifiers. Some of
12 the members of the team, of the certification
13 team, are purely auditing entities. Some other
14 members of the certification teams were on the
15 team because they were technical experts, which
16 the auditors did not have. You know, they had the
17 accounting background, but not the technical. And
18 those technical experts are part of organizations
19 that are providing other services to BP.

20 So, I can see item (3) which says
21 identify whether the certifier has previously
22 provided certification services for the Registry
23 participant, and so the years that such was
24 provided, but item 4, and especially the plethora
25 of elements within item 4 is so far-reaching, that

1 it might preclude, in the case of BP, it might
2 preclude using as a certifier any team that BP
3 management would rely on or that would be willing
4 to use.

5 And might force BP to go and use a
6 certifier that is on the Registry list but that BP
7 doesn't want to have a working relationship with
8 because of whatever their reason is.

9 So, by requiring all of this on the
10 certifier, and putting such an emphasis on past,
11 present and future relationship for non-
12 certification work, that can become a threshold
13 barrier for BP to consider whether it wants to
14 participate in this activity. Because it's not
15 going to put in its data, report its data if it
16 doesn't know that it can go on with the next step
17 and get it certified and get it published.

18 MR. WILSON: The difficulty with this,
19 though, is that the section you point out really
20 is the heart of conflict of interest. If a
21 company has had prior relationships, especially
22 for what we're -- for consulting services,
23 although that is a term that's often
24 misunderstood. When a firm uses the term
25 consulting very often they have a particular

1 meaning associated with that.

2 But this really is the heart of the
3 conflict of interest. What we've seen at the
4 Commission is that, indeed, companies will often
5 have relationships with firms that may want to act
6 as certifiers, and because this is a new field and
7 there are not a large number of firms that are
8 focusing on this, it may be that firm is working,
9 that is a firm that might be qualified as a
10 certifier, is working with a particular
11 participant in many parts of the world doing
12 pretty much the same thing they would do as a
13 certifier in California.

14 And that does have the potential of
15 creating a conflict of interest, because they
16 would essentially be certifying their own work in
17 that circumstance.

18 DR. LEV-ON: No, but you said if they
19 are hired by a multinational company to certify
20 their worldwide inventory of greenhouse gas
21 emissions. And that company has created its
22 inventory of greenhouse gas emissions using its
23 own internal guidance based on Registry, based on
24 whatever guidance that exists.

25 And then they have a team of certifiers

1 that go around the world and take samplings, or
2 you know, sample different facilities, they're not
3 necessarily go and audit 100 percent of the
4 facilities. But why is this a conflict of
5 interest?

6 MR. WILSON: Because the situation
7 that's created there is that if a certifier that
8 has been state and Registry approved had
9 previously gone out and investigated and evaluated
10 a firm's GHG inventory, but it was not against a
11 specific protocol --

12 DR. LEV-ON: It was against the internal
13 protocol that the company had.

14 MR. WILSON: -- then that certifier is
15 not able to give what the Commission would
16 consider an objective opinion. Because it's not
17 based against a recognized protocol.

18 And so if that same firm were to act as
19 a Registry certifier, they would be evaluating
20 their own work in that their previous work would
21 really fit the description of technical
22 assistance. And the heart of the conflict of
23 interest is that we can't have a firm that acts as
24 both a certifier and a technical assistant.

25 DR. LEV-ON: There are some clear-cut

1 examples like I'll take myself as the first --
2 personal examples. I would not be qualified to be
3 a certifier for any of the BP work. Not even be
4 on a team with the certifier, nothing, because I'm
5 too close, especially to the facilities here in
6 California and what is being done.

7 But a company that, or a team of
8 companies that have together been hired by the
9 corporation to certify and inventory that was
10 developed under the company guidance, so they were
11 certifying to the external company guidance, and
12 they might have had findings that were provided to
13 the company, provided to the business unit.
14 Businesses might have had to go back and re-do
15 inventories, company guidance might have evolved
16 since then. And now three years later they would
17 come and certify the facilities in the State of
18 California that are submitting their data to the
19 Registry against this new Registry protocol and
20 using the certification protocol that the CEC has
21 developed. Why is this a conflict of interest?
22 Why would that be a conflict of interest?

23 MR. WILSON: I would like to say that I
24 don't want to suggest that we can say upfront
25 whether that would or would not be a conflict of

1 interest. That would fall in the category of
2 medium potential for conflict of interest. And
3 we would have to go through a case-by-case
4 evaluation in that situation.

5 A certifier is not necessarily precluded
6 from certifying a company that they had previously
7 evaluated a GHG inventory against a standard. For
8 example, perhaps the 1605(b) program. Or perhaps
9 climate leaders, or perhaps some other program
10 that has established protocols.

11 So they aren't automatically precluded
12 from doing that, but they would be -- in the self-
13 evaluation they would indicate that they have a
14 medium potential for conflict of interest. And
15 then they would provide enough information so that
16 the Commission could do a case-by-case evaluation.

17 Robyn, do you have a comment?

18 MS. CAMP: Yeah. I'm also wondering,
19 because in your initial application certifiers
20 have to provide documentation that they have
21 mechanisms in place to avoid conflict of interest.

22 MR. WILSON: Um-hum.

23 MS. CAMP: How does that factor into
24 your review of the case-by-case evaluation?

25 MR. WILSON: It basically -- it forms a

1 basis for the Commission's evaluation. When we go
2 forward we have certain basic information on the
3 certifier. That is we know the nature of the
4 services provided by the certifier. We know how a
5 certifier is related to the parent company or any
6 subsidiaries.

7 So we use that as a basis for going
8 forward. And then in the case-by-case evaluation
9 we look at the specific relationship between the
10 certifier and the registered participant and make
11 a determination on the specifics.

12 MR. du VAIR: This is Pierre du Vair at
13 the California Energy Commission. I would just
14 add to what you have said in terms of if an
15 applicant has a clearly defined conflict of
16 interest program in place where it has a mechanism
17 to identify potentials for conflict of interest, I
18 think what Jeff's saying is that in these medium
19 cases we're able to have something that the Energy
20 Commission can hang its hat on and say, we've
21 identified there's prior relationships here;
22 there's been financial relationships between the
23 certifier and the Registry participant, but that's
24 the kind of criterion we can use to say we believe
25 that this medium conflict of interest is

1 mitigatable, or is sufficiently mitigated that the
2 Commission could approve that relationship for the
3 California Climate Action Registry.

4 So that would be a critical kind of
5 piece that a certifier can show that they've got
6 mechanisms to keep their individual certifiers
7 essentially free from biases due to prior
8 relationships.

9 MR. WILSON: Miriam, do you have
10 questions?

11 DR. LEV-ON: I have a specific question
12 in small item (b) to (I), providing legal or
13 expert services unrelated to Registry
14 certification. Could you tell me what this
15 relates to?

16 MR. WILSON: There are principles
17 underlying the conflict of interest; and one of
18 the principles, as I've mentioned before, is if
19 the certifier is evaluating their own work.

20 Another principle is if the certifier is
21 acting as an advocate for a participant. And
22 that's where this comes from.

23 So, providing legal or expert witness
24 services -- and do you have the most recent copy?
25 We have a ~~strikeout~~/underline that we provided at

1 the door --

2 DR. LEV-ON: I don't think I picked it
3 up.

4 MR. WILSON: Okay. There's a slight
5 change in language there. We did have, providing
6 legal or expert services unrelated to Registry
7 certification. We've changed that to providing
8 legal or expert witness services of any kind.

9 (Pause.)

10 MR. WILSON: And the other principle
11 that underlies conflict of interest is that a
12 certifier should not perform management functions
13 for the participant. And that's where the line
14 managing any health, environmental or safety
15 functions. So if the certifier is managing some
16 of the participant's activities, that would
17 constitute a conflict of interest.

18 DR. LEV-ON: So, if a -- I'm looking
19 here at hypotheticals and trying to see how far is
20 this reaching. If a certifier is part of a larger
21 entity, is affiliated with a larger entity, and
22 that entity is providing HS and E services to
23 let's say BP in Pakistan, that constitutes a
24 conflict of interest from their affiliate being
25 able to provide certification services for the

1 Registry in California?

2 MR. WILSON: It depends on the nature of
3 he work, and all of the factors that are outlined
4 here. So, again, we would have to do a case-by-
5 case determination. And under section (B), that
6 is part (B) of this section, if any of these items
7 apply in the section then the certifier would
8 indicate that in their self-evaluation that they
9 have a high potential for conflict of interest.
10 And then the Commission would either concur or --
11 and if we concur with that, then the Commission
12 would determine that there is unacceptable risk of
13 conflict of interest.

14 However, we would always be, in essence,
15 doing a case-by-case evaluation. And so without
16 knowing the specifics of the services provided in
17 Pakistan or whatever, I wouldn't be able to say
18 whether it is or is not.

19 DR. LEV-ON: This is just an example I'm
20 trying to show kind of the distance, because it
21 could be a subsidiary of the main holding company
22 that is in that -- providing some services in that
23 region. And it is totally remote, even within the
24 context of the certifier that is affiliated with
25 this company from any work that has been done in

1 the U.S. or specifically in California from any --

2 MR. WILSON: Yes, --

3 DR. LEV-ON: So that's -- I understand,
4 I think I understand the principle, I'm just
5 trying to look practically how you would apply
6 this in practice for a very large company. And
7 whose responsibility -- it's going to be the
8 responsibility of the certifier to --

9 MR. WILSON: Yes, the certifier, um-hum.

10 DR. LEV-ON: -- attest to all of this?
11 There is a chance that a lot of the certifiers
12 will just not want to go through all this effort.

13 MR. WILSON: Yes. I understand your
14 concern, and this would be the certifier's
15 responsibility. The example you've given has been
16 brought up in the past, and on the surface it may
17 appear as though geographical distance would be a
18 mitigating factor. And, of course, it would be a
19 factor in determining the case-by-case evaluation.

20 However, because this is a very small
21 field, it may be that a firm has a small number of
22 staff that actually evaluate a GHG inventory and
23 the same staff person, for example, if the nature
24 of the work in Pakistan were evaluating a GHG
25 inventory, it could be that the same person

1 evaluating the inventory in Pakistan is the same
2 person that's evaluating the inventory in
3 California.

4 DR. LEV-ON: Um-hum.

5 MR. WILSON: And, again, without knowing
6 the specifics we wouldn't be able to say one way
7 or another. But there is a potential that there
8 could be bias if someone has been evaluating a
9 worldwide inventory and then turns around and
10 evaluates the California inventory.

11 DR. LEV-ON: I understand your
12 rationale. I'm just trying to think on how this
13 would work out in practice. One of the motivators
14 for a company such as BP that is investing a lot
15 of money on a global basis in its greenhouse gas
16 program, one of the motivators to participate in
17 the California Registry on a voluntary basis is
18 because there was a potential that it's not going
19 to add a lot of burden, was in the context of the
20 overall program that they're already managing, you
21 know, generating their emission inventories and
22 also the third-party auditing and reviewing of all
23 their emissions.

24 So, if that requirement becomes so
25 stringent, so convoluted and so overreaching that

1 might cause some fears in not California entities,
2 but in a global management. And whether they need
3 even to concern themselves with such a California
4 program. Whether that's a good choice to continue
5 to volunteer to be in the California program.

6 I'm not saying anything that BP was
7 thinking about, but that definitely is a
8 consideration. Because part of the consideration
9 to participate was if it fits within their overall
10 program and they did not need to create a whole
11 new program and a whole new administration in
12 order to be able to voluntarily participate in the
13 California Registry; was a way of putting just the
14 emissions from their California facilities as an
15 example of, you know, the part of their overall
16 activism in this area.

17 MR. WILSON: On a practical level, do
18 you anticipate that a certifier would have to do
19 more than a database search? Or how do you see it
20 playing out on the practical level?

21 DR. LEV-ON: Well, normally the way they
22 do the certification, the BP-wide certification,
23 is they let out a global contract. It started out
24 with four companies teaming up; I think now it's
25 pared down to about maybe two. Because a lot of

1 the technical expertise that they were originally
2 looking for to actually help was evaluating the
3 adequacy of the protocol, is no longer needed
4 because the protocols have evolved. They're more
5 established protocols through WRI WBC's -- there's
6 petroleum industry guidelines and so there's no
7 need for that.

8 So they're looking more at the strict
9 auditing aspects, you know, third-party auditing
10 aspects. And making sure that the claims that
11 they're making in their global reports on
12 greenhouse gases can be verified. You know, that
13 is -- station that goes with it.

14 So, typically the certification is on a
15 global basis through the database, and then site
16 visits to a selected number of sites throughout
17 the world in the different business sectors that
18 the company's involved different size of
19 facilities and complexity. Maybe revisiting sites
20 that had problem with the evaluation where
21 previous years have shown that they had
22 inaccuracies in their evaluations. That kind of
23 thing.

24 And the idea, I still think that the
25 idea is to kind of use this overall auditing

1 approach and just include California facilities,
2 or somehow make them over-sample California in
3 order to meet the requirements for the Registry.

4 But, ideally it was not to let out a
5 whole new separate contract and get into a totally
6 new relationship with somebody that they have not
7 used in certification before.

8 MR. WILSON: So, are you saying that you
9 don't believe there would be any difficulty for a
10 certifier identifying if they've had a
11 relationship with BP, for example, a participant?
12 So that wouldn't be the source of difficulty?

13 DR. LEV-ON: Yeah, the way -- it's
14 possible that the certifier will be able to just
15 say, you know, I've done certification work for BP
16 for the past five years, but I have not done
17 other, you know, technical assistance provision.
18 But I don't know that, and I don't want to sit
19 here and say that this is a done deal. And
20 whatever certifier they choose, because it's not
21 necessarily that the same certifier that was used
22 to do the last round of audits is the one that is
23 going to do this round of verifications.

24 They might let out a competitive
25 contract for verification. So this might be

1 somebody else.

2 MR. WILSON: Okay, yeah, I'm trying --

3 DR. LEV-ON: So I'm -- I don't know the
4 specifics, and I don't think that the specifics
5 are the thing that is -- it's more the principle
6 of the things of how much of a burden is it going
7 to be to find a certifier that cannot be
8 challenged because of different relationship or
9 the different relationship that their affiliates
10 might have with BP in other parts of the world.

11 And also, to find a method of doing it
12 efficiently so that it can be done within the
13 scope of the overall auditing of the BP worldwide
14 inventory, rather than have to put out the
15 resources to kind of for a new startup for just
16 doing the California program.

17 MR. WILSON: Pierre, do you have a
18 comment?

19 MR. du VAIR: If I can just respond to
20 Miriam a little bit. This is Pierre du Vair with
21 the California Energy Commission.

22 I guess it's a little bit disconcerting
23 from the state's perspective to hear that some of
24 these larger participants might not be willing to
25 enter into some new relationships for purposes of

1 their California voluntary greenhouse gas Registry
2 emissions certification.

3 The enabling legislation really put
4 quite a bit of emphasis on the certification
5 process, and a lot of responsibilities on the
6 Energy Commission and the state, broadly the
7 state, to really insure that the certification
8 process works well.

9 So I think it's our hope that these
10 early actors that do join the California Registry
11 really are open to some new relationships with
12 certifiers.

13 We're very concerned about conflict of
14 interest and we think that, you know, even just
15 for public perception-wise, that we will be doing
16 a case-by-case when there are prior relationships.
17 But, again, because this is a new field, because
18 of a lot of the difficulties that have happened,
19 you know, with the Enrons and the Worldcoms and
20 the Arthur Andersen type issues, we do hope that
21 participants will consider for their California
22 emissions inventories, anyway, entering some new
23 relationships with some of the certifiers.

24 And we hope that our pool of -- we have
25 about nine, but whatever we have when we offer it

1 again, is going to be big enough of a pool that
2 the large companies that have utilized a lot of
3 certifiers already are able to find someone that
4 they can start a new relationship with.

5 MR. WILSON: And, Miriam, I want to
6 better understand what you would consider the
7 nature of the burden that might be placed on
8 either the certifier or the participant under the
9 requirements that we have here.

10 DR. LEV-ON: I think, and again it's
11 true that this is a burden that is placed mainly
12 on the certifier and not on the company, on the
13 participant, but the company's concern is that
14 once the certifiers go through this analysis vis-
15 a-vis their past, present or future relationships
16 with BP, like it's stated here in item 4(B), that
17 they either -- that the company, the certifier,
18 will either do not want to -- will not be able to
19 really enumerate all of this and satisfy you that
20 there's no conflict of interest.

21 Or, that especially as it relates to
22 future relationships, they might say if my parent
23 company, which is a very large service provider in
24 technical assistance, would jeopardize potential
25 contract because I'm a certifier, then maybe I

1 just don't want to be a certifier for BP in
2 California.

3 MR. WILSON: Okay, there were two points
4 there. On the first point, during the
5 qualification process we do require that the
6 certifiers demonstrate that they have mechanisms
7 in place where they can do a case-by-case
8 evaluation.

9 DR. LEV-ON: Right.

10 MR. WILSON: So they should have
11 databases that list --

12 DR. LEV-ON: Yeah, and --

13 MR. WILSON: -- clients and --

14 DR. LEV-ON: -- BP's a large enough
15 client that most large companies have somebody, a
16 principal in charge that manages and account like
17 BP --

18 MR. WILSON: Yes.

19 DR. LEV-ON: -- so they should know what
20 they are doing.

21 MR. WILSON: Yes. And this actually
22 applies to the certifier.

23 DR. LEV-ON: Yes.

24 MR. WILSON: So the certifier, during
25 the qualification process, has already made a

1 demonstration that they have databases that they
2 can simply do a search; that they have someone in
3 place -- you know, that may be used as an example.
4 They could have other mechanisms, but they have to
5 demonstrate that they have the ability to do a
6 case-by-case evaluation to determine their prior
7 relationships.

8 And on that basis it would not appear
9 that it would be an undue burden on the certifier
10 to go through that search, because that's what
11 they have to demonstrate.

12 On the other point, and your second
13 point was that he --

14 DR. LEV-ON: Certifier, themselves,
15 especially since the wording here says the nature
16 of past, present or future --

17 MR. WILSON: Um-hum.

18 DR. LEV-ON: -- relationships with the
19 Registry participant. And the certifier,
20 themselves, might choose not to jeopardize
21 potential future relationships for their much
22 larger engineering contract, and decide to decline
23 in providing the certification services.

24 MR. WILSON: And, yes, that's a
25 possibility. And that may actually be at the

1 heart of a conflict of interest. If a company has
2 an engineering contract, a large engineering
3 contract that they don't want to jeopardize, then
4 that could well bias their certification.

5 And so the example that you provide
6 actually would indicate that there is a potential
7 for conflict of interest.

8 DR. LEV-ON: I understand your
9 perspective. Don't, you know, don't take me
10 wrongly. I'm just trying to represent some of the
11 problems or the issues that are kind of -- and
12 they have not jelled yet within BP; this is why
13 I've not provided any written comments at this
14 workshop. And need to talk to the principals in
15 Chicago and see what they want to do as far as
16 providing written comments on the issue.

17 But the original concept, and maybe it
18 was naive on the part of BP, but the original
19 concept when entering into the California Climate
20 Registry was an understanding that there would be
21 a list of certifiers. That, you know, the state
22 would go through this list. And we have the list.
23 It's on the Registry website.

24 If one of the certifiers that either BP
25 has used in the past, or they want to enter into a

1 relationship right now, that's the certifier,
2 that's it. Well, they get hired and they get the
3 job of doing the California inventory.

4 But not if they have to go through all
5 these hoops and say, are you this or that, are you
6 affiliated with this, are you potentially could
7 have a -- had a conflict of interest or could have
8 conflict of interest.

9 It just creates a threshold issue and a
10 nuisance factor. Maybe it's only a nuisance,
11 maybe just something that will stretch for another
12 two or three months, or, you know, extend the
13 period until you actually can start something.

14 But, you know, that's the nature of
15 bureaucracy. What can you do.

16 MR. WILSON: Yes, but you recognize the
17 value of the process of going through a conflict
18 of interest?

19 DR. LEV-ON: You know, I recognize the
20 value of, you know, some of the things for the
21 conflict of interest. And I recognize the value
22 of having some arm's length relationship if the
23 certifier is affiliated with a larger company, for
24 them to demonstrate that their certification
25 verification service, whatever, is at arm's length

1 from the rest of their company.

2 But some of the requirements here go
3 above and beyond what I thought that would be
4 required to certify.

5 MR. WILSON: Robyn, did you have a
6 comment?

7 MS. CAMP: Yeah, and --

8 DR. LEV-ON: And we've had some
9 discussion with the Registry, I don't know in that
10 detail, but I think we raised some issues along
11 these lines.

12 MS. CAMP: And we're also concerned,
13 too. We don't want it to get to a situation --
14 the Registry is in a position of balancing wanting
15 to maintain rigor and credibility and a high level
16 of distance, you know, the data is very credible.
17 But also wanting to make sure that it's a program
18 that somebody doing a cost/benefit analysis sees
19 that the benefits far out-weigh the costs.

20 And what the Registry is hearing from
21 certifiers is that the costs to apply are
22 significant; the costs to negotiate a contract are
23 significant. But, you know, these are costs of
24 doing business. They accept that and they
25 recognize that.

1 But as we add on additional costs, the
2 costs of complying with the case-by-case
3 evaluation, the costs and so on, pretty soon from
4 a certifier's perspective the costs of
5 participating outweigh the potential benefits to
6 their business.

7 And so we don't want to get to a
8 situation where, you know, big companies that are
9 very internationally respected find that it
10 doesn't behoove them, that it's not profitable, or
11 rather it's not a good business opportunity to
12 participate in the program.

13 We feel that that would also undermine
14 the credibility of the certifications.

15 MR. WILSON: Thank you. I'd like to
16 move on unless there are further comments on this.

17 (Pause.)

18 MR. WILSON: Correct me if I'm wrong,
19 but I believe I was at 2841, the potential for
20 conflict of interest shall be deemed high where
21 certifier or any related entity has provided to
22 the Registry participant within the last three
23 years any of the following; and that is designing,
24 energy efficiency, renewable or other projects
25 which explicitly identify GHG reductions as a

1 benefit; preparing or producing GHG-related
2 manuals, handbooks or procedures specifically for
3 the Registry participant; appraisal services of
4 carbon or GHG liabilities/assets; designing,
5 developing or maintaining a GHG inventory of GHG
6 information system; developing GHG emission
7 factors or GHG-related engineering analysis.

8 The conflict of interest would also be
9 deemed high if the certifier or participant share
10 any current or previous management within the last
11 three years. The potential for conflict of
12 interest shall be deemed high where a certifier or
13 any related entity has provided to the Registry
14 participant within the last three years brokering
15 in, advising on or assisting in any way in carbon
16 or GHG markets; managing any health environment or
17 safety functions; or providing legal or expert
18 services of any kind.

19 And I just wanted to point out that we
20 have a slight language change on that. I
21 mentioned it earlier. It did say providing legal
22 or expert services unrelated to Registry
23 certification. What we would like to propose is
24 that it state providing legal or expert witness
25 services of any kind.

1 The certifier in their self-evaluation
2 would also indicate that they have a high
3 potential if the certifier has provided
4 certification services for six previous years or
5 had a lapse without abstaining for three
6 consecutive years.

7 On the other hand the potential for
8 conflict of interest in the certifier's self-
9 evaluation shall be deemed low where the Registry
10 participants GHG inventory is less than 500 tons
11 of CO2 equivalent, and the certifier has not
12 performed certification for the participant in the
13 previous year.

14 I do want to point out that there is a
15 language change here, as well. That was an
16 oversight on my part. I apologize. Originally
17 the language indicated that potential conflict of
18 interest shall be deemed low where no potential
19 for conflict of interest is found under subsection
20 (B); that was the section that I just cited where
21 the potential would be deemed high. And the
22 Registry participant's annual entity-wide
23 emissions inventory is less than 500 tons CO2
24 equivalent, and the certifier has not performed
25 certification services in the previous year for

1 the Registry participant.

2 That requirement of 500 tons should
3 stand on its own. That is a certifier would not
4 have to go through determining whether it's a high
5 conflict. They could just, if they determine that
6 the participant is less than 500 tons, it
7 automatically, their self-evaluation would
8 indicate that it's a low conflict of interest.

9 DR. LEV-ON: So it's both 500 tons and
10 the certifier has not performed certification
11 services in the past year?

12 MR. WILSON: Correct. And this would be
13 consistent with the Registry's batch certification
14 process.

15 The other situation where a certifier
16 would self-evaluate that the potential for
17 conflict is low is if there is no high potential
18 for conflict of interest was found in the previous
19 section, and the services provided by the
20 certifier to the participant are valued at less
21 than 20 percent of the certification fee or
22 outside of the United States, and less than 50
23 percent of the certification fee.

24 Section 2841, the potential for conflict
25 shall be deemed medium where the potential is not

1 deemed either high or low. If the certifier
2 identifies a medium potential for conflict of
3 interest, the certifier may submit a plan to
4 avoid, neutralize or mitigate the potential for
5 conflict of interest.

6 And here again I believe there's a
7 language change in the proposed regs that were
8 sent out. I believe it said that in the case of a
9 medium potential the certifier shall submit. We
10 simply changed that to may submit.

11 The Commission shall consider the plan
12 when determining whether the potential is
13 acceptable or unacceptable.

14 Section 2842, if a certifier has an
15 unacceptable potential for conflict of interest
16 with a Registry participant, the Commission shall
17 recommend to the Registry that the Registry not
18 accept the certifier's certification.

19 If the Commission concurs with the
20 certifier that the potential for conflict is high
21 then the Commission will determine that potential
22 for conflict is unacceptable.

23 If the Commission concurs with the
24 certifier that the potential for conflict is low
25 then the Commission will determine that the

1 potential for conflict is acceptable.

2 If the Commission concurs with the
3 certifier that the potential for conflict is
4 medium or the Commission does not concur with the
5 certifier's evaluation then the Commission will
6 consider a number of factors including the nature
7 of the work, the relationships, the cost of
8 certification and mitigation plan, if any, to
9 determine if the potential for conflict is
10 acceptable or unacceptable.

11 And the Commission may request
12 additional information to complete a
13 determination.

14 Section 2843, the Commission will notify
15 the certifier in writing when conflict of interest
16 information is deemed complete. And the
17 Commission will issue a determination within ten
18 working days of deeming the conflict of interest
19 information complete.

20 Section 2844. No earlier than the date
21 on which the Commission makes a conflict of
22 interest determination that the potential for
23 conflict is acceptable, the certifier shall submit
24 a notice of certification services.

25 The notice of certification services

1 shall contain general information on the certifier
2 and Registry participant; whether the reporting is
3 for California or nationwide; whether the
4 participant is reporting for a baseline year; the
5 number of facilities to be visited for
6 certification; the dates of visits and completion
7 of certification; a brief description of
8 certification services to be performed; a list of
9 information the participant will provide to the
10 certifier; staff who will undertake certification
11 and their roles and responsibilities.

12 The notification of certification
13 services shall also contain a conflict of interest
14 form and a form signed by the Registry participant
15 acknowledging the right of the Commission to
16 conduct visits.

17 The certifier may begin certification
18 ten working days after the notice is received by
19 the Commission or earlier if so stated by the
20 Commission.

21 Section 2845. After the commencement of
22 certification the certifier shall monitor and
23 immediately make full disclosure in writing to the
24 Commission regarding any potential for conflict.

25 The certifier shall monitor potential

1 conflict for one year after certification. The
2 certifier will notify the Commission within 30
3 days of entering into any contract with the
4 participant.

5 And the Commission may recommend to the
6 Registry that the results of a certification in
7 which a conflict has arisen to be invalidated.

8 DR. LEV-ON: And that, if I may say, you
9 know, I think I understand why you have it there,
10 but that's the kind of uncertainty that might
11 cause grief to a company, especially if you
12 already hired a certifier; you went through all
13 the process; they got started; and then some
14 subsidiary or some affiliate or something got the
15 contract with your company on a totally unrelated
16 work which might create the appearance of a
17 conflict of interest.

18 And then all the effort that was done
19 gets invalidated, which means that the report
20 cannot be placed publicly on the Registry site.
21 It will have to start the certification process
22 all over again.

23 MR. WILSON: I don't believe that
24 situation would occur as you've explained it,
25 because in the hypothetical situation you

1 described it was unrelated work. If it is truly
2 unrelated work and not a conflict of interest,
3 then the Commission would not recommend that the
4 certification be invalidated.

5 Those are the situations that this
6 process is trying to provide room. It's
7 situations where a certifier goes through a
8 certification process and then does follow up with
9 work, contract work that is, in fact, related.
10 And would indicate high potential for conflict of
11 interest. Which, in other programs, has been
12 sometimes the case that there is a relationship
13 between current work and future work.

14 DR. LEV-ON: Yeah, I'm not saying that
15 it's not possible. Of course, it's -- and some
16 companies, some small certifiers or evaluators
17 sometimes might even choose to take a small
18 contract just to do an auditing just as a way of
19 getting to know the company and maybe providing
20 more services.

21 So, is there a problem with this if they
22 finish their certification, provided the
23 certification report, and then let's say two
24 months down the line they get called back to help
25 the company with fix some of the problems that

1 were found in the emission report, or do some
2 other work.

3 Is there any problem with the past
4 report? I can see a problem with future
5 certification, but is there any problem with the
6 certification that they've just completed?

7 MR. WILSON: There is the potential if
8 there's some sort of quid pro quo where a
9 participant would bias the certifier's opinion on
10 a Registry certification, and give consideration
11 for future contract work. So there is that
12 potential. And it's that duration that, I mean if
13 they are hired immediately after there is at least
14 the perception of the potential for conflict of
15 interest, if not actual conflict of interest.

16 We do have just a one-year period, call
17 it a cooling off period, if you like. After one
18 year this would not apply.

19 DR. LEV-ON: Just it's kind of amazing
20 that we're going through all this procedures and
21 all this process for a voluntary program. This
22 does not, you know, if it was an emission trading
23 program, if it was an accrediting program where
24 you have a market and you get monetized emissions
25 or emission reductions.

1 But to put in place all this
2 administrative framework for a voluntary program I
3 daresay that they might choose just to wait and
4 see what happens in other parts of the country.

5 MR. WILSON: Well, there are two parts
6 of Senate Bill 527 that make this a greater
7 concern; that is that we go through a thorough
8 conflict of interest. And the first part is that
9 SB-527 states that the State of California will
10 provide its best efforts to provide reasonable
11 consideration under future regulatory scenarios
12 for any data submitted to the Registry that's
13 certified.

14 So, there appears to be some obligation
15 on the state to provide reasonable consideration
16 for this data. So that's one concern.

17 And then in Senate Bill 527 it also says
18 that in the qualification process for the
19 certifier that they need to be able to be held
20 finally at risk for their certification opinion.
21 And so this also provides protection for the
22 certifier and for the state and for the Registry,
23 and actually for Registry participants by avoiding
24 situations where a conflict might occur that would
25 discredit the Registry and the results that are

1 contained in the Registry. This process provides
2 that protection.

3 And so, as Robyn has said, you know,
4 there is a balancing act that we need to consider
5 here. But it's important to have credible data.
6 And simply reading the headlines for the last few
7 years it's clear that there are issues surrounding
8 conflict of interest and credibility. So, --

9 DR. LEV-ON: Yeah, but I definitely
10 understand that. This is why I prefaced what I
11 said, that if it was an emission trading program
12 or a commodity exchange or where money changes
13 hands, I can see some of these things.

14 But for a totally voluntary program this
15 doesn't smell like a voluntary program. And it
16 might be the best process in the world, but if
17 nobody participates then it's all for naught.

18 MR. WILSON: Do you have an
19 interpretation of what SB-527 means when they say
20 that the certifier will be held financially at
21 risk for their certification opinion?

22 DR. LEV-ON: No. I don't have any
23 interpretation --

24 MR. WILSON: Or do you have any
25 interpretation of what it means for the state to

1 use its best efforts to provide reasonable
2 consideration under future regulatory scenarios?

3 DR. LEV-ON: Yeah, like a, what you call
4 it, credit for early action would be the
5 terminology that's been used in the federal
6 government. That if -- since the obligations are
7 that the U.N. Framework Convention are finally
8 changed, go back to 1990 baseline, or stabilizing
9 the atmospheric concentrations of CO2 or the
10 emissions of CO2 back to 1990, that's if companies
11 are taking action earlier than any future
12 regulatory -- because there's no regulatory thing
13 in place on the federal level. And then the
14 state, which would be able to point out, you know,
15 these companies -- if, for example, every
16 company's required to reduce their emissions by 10
17 percent; and California companies that participate
18 in the Registry have already shown that they've
19 reduced emissions by 10 percent, then they should
20 be given credit for that. That's my
21 interpretation.

22 MR. WILSON: So a company could derive
23 financial benefit from the data that's stored at
24 the Registry?

25 DR. LEV-ON: Yeah, I'm sure it could if

1 the system evolves to that. But right now it
2 doesn't. And that's the same conflict that's
3 happening now also with the federal government in
4 their revamp of 1605(b) of how do they balance
5 between a voluntary program and a credible
6 program.

7 They even had a phrase for that, you
8 know, credible versus creditable.

9 MR. WILSON: Yes.

10 DR. LEV-ON: And I don't have a magic
11 bullet for this. I mean it's -- there's no magic
12 bullet, there's no simple of doing it. It's just
13 a question of, as Robyn said very well, it's a
14 balancing act.

15 And maybe I should ask Robyn, Robyn how
16 many, you know, you have now 40 members. Has
17 anybody reported?

18 MS. CAMP: We have one certified member
19 and we have 12, 13 members that are in the
20 process, who have hired certifiers and are in the
21 stages of certification.

22 DR. LEV-ON: And they all followed this
23 new procedures, or they're all go by the old
24 procedures?

25 MS. CAMP: The old procedures. And

1 actually I should clarify that most of these are
2 very small members. So, they're not dealing with
3 the complex relationships because they're just not
4 complex organizations.

5 So, I mean this is a dialogue that we
6 need to have and resolve this, because we do have
7 the full spectrum and variety of members, small,
8 medium and large. And this is especially of issue
9 for large members.

10 DR. LEV-ON: Yeah.

11 MS. CAMP: Yeah.

12 MR. WILSON: Well, we're at the end of
13 the presentation, and we zipped through without
14 taking a break. If there are any further comments
15 or questions, I'm eager for you and others to
16 submit written comments, if you have any.

17 DR. LEV-ON: Do you have a -- what's the
18 process going forward? Do you have some dates or
19 deadlines?

20 MS. DeCARLO: Yes, June 2nd is when the
21 Commission will be voting on approving the
22 regulations and adopting them. So, comments can
23 be submitted up until June 2nd, but really if you
24 want to really allow us enough time to read
25 through them and incorporate them into any

1 revisions that we submit to the Commission, it
2 would be useful to have them prior to that, prior
3 to June 2nd.

4 DR. LEV-ON: Today is May 10th.

5 MS. DeCARLO: Yes.

6 DR. LEV-ON: June 2nd is like three
7 weeks from now. Looking at the big attendance at
8 this workshop I'm not sure even how many entities
9 are aware of the potential. So how can you expect
10 the Commission to knowledgeably approve this
11 regulation without having the dialogue that Robyn
12 has just said, you know, even among the 40
13 companies that are now part of the Registry?

14 MR. WILSON: If necessary, we can extend
15 the period. We are scheduled, or we anticipate
16 scheduling meeting with the Board -- pardon me,
17 the Commission on June 2nd. At that time we could
18 recommend, if we do receive comment, to extend the
19 public comment period.

20 DR. LEV-ON: The Registry is a
21 stakeholder in this discussion, so the Registry,
22 itself, will probably want to provide --

23 MS. CAMP: Yes, we will absolutely be
24 providing written comments.

25 DR. LEV-ON: So would you consult with

1 your --

2 MS. CAMP: We will consult with our
3 members.

4 DR. LEV-ON: -- with your members? I'm
5 just concerned that there's really not enough time
6 to do this in proper fashion. And I don't know if
7 there's a Registry Board meeting coming up.

8 MS. CAMP: Not in that window, no.

9 DR. LEV-ON: Where this can be brought
10 up to the Registry Board.

11 MS. CAMP: Right. Yeah, --

12 DR. LEV-ON: When is the next Registry
13 Board meeting?

14 MS. CAMP: The end of June.

15 MR. WILSON: June 24th.

16 MS. CAMP: June 24th, right.

17 MR. WILSON: Yes.

18 MS. CAMP: June 20th -- 24th? Okay.
19 So, yes, actually maybe we'll -- as you know, I'm
20 going back today and will discuss this internally.
21 Maybe we will make a written comment proposing a
22 delay. But we'll work that out shortly.

23 DR. LEV-ON: Um-hum.

24 MR. WILSON: Yes. The Commission will
25 be responsive to public comments concerning proper

1 notification or a wider audience, or subsequent
2 meetings to discuss this.

3 DR. LEV-ON: No, I think you laid out
4 very clearly; it's just that I'm concerned that
5 not a lot of people maybe have been paying
6 attention, or they don't think that it's going to
7 impact them that much.

8 MS. CAMP: Right. I think part of the
9 issue today specifically was there wasn't much
10 advance notice of this workshop --

11 DR. LEV-ON: There was some earlier
12 notice, I don't know, a while back, kind of an
13 informal notice saying --

14 MS. CAMP: But I think the date even
15 changed from that --

16 MR. WILSON: Well, there have actually
17 been several notices that have gone out. There
18 was the original notice, but for the Commission
19 meeting that was noticed by Office of
20 Administrative Law.

21 MS. DeCARLO: That was the formal notice
22 of proposed action that --

23 DR. LEV-ON: For the June 2nd, yeah.

24 MR. WILSON: Um-hum.

25 MS. DeCARLO: -- that started the

1 regulatory process.

2 DR. LEV-ON: Right.

3 MR. WILSON: Right. And then the
4 Commission has sent out notice; and then the
5 Registry sent out notice to their list server, as
6 well.

7 DR. LEV-ON: I don't remember seeing
8 anything from the Registry list server on that --

9 MS. CAMP: I'll double check.

10 DR. LEV-ON: I got this from the --

11 MS. CAMP: My understanding -- well, as
12 it -- anyway, I'll tell you more about that --

13 DR. LEV-ON: Well, I got this from the
14 CEC list server from looking at the CEC board.
15 And I think you're right, that the initial notice,
16 there was an earlier notice that came that was
17 kind of very unusual, especially in these days of
18 viruses, because it just says a one-line notice
19 saying agenda for the staff workshop attached.
20 Which is almost -- was almost like the messages
21 that you get with the viruses.

22 And then there was the CEC notice about
23 the June 2nd. And if you look into that, then you
24 see that there's also a staff workshop.

25 Anyway.

1 MR. WILSON: Yes. All right, well,
2 thank you. This concludes the meeting. And we
3 will consider written comments, and if necessary,
4 we will extend the public comment period.

5 Thank you.

6 Off the record.

7 (Whereupon, at 11:49 a.m., the workshop
8 was adjourned.)

9 --o0o--

CERTIFICATE OF REPORTER

I, ALAN MEADE, an Electronic Reporter,
do hereby certify that I am a disinterested person
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I further certify that I am not of
counsel or attorney for any of the parties to said
workshop, nor in any way interested in outcome of
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IN WITNESS WHEREOF, I have hereunto set
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